

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DLOS-06 DODE-00
DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01
INR-07 INT-05 IO-13 JUSE-00 NSAE-00 NSC-05 NSF-01
OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 SAL-01
NSCE-00 SSO-00 USIE-00 INRE-00 /114 W

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TO SECSTATE WASHDC IMMEDIATE 2526

INFO ALL EC CAPITALS 2837

AMEMBASSY MADRID IMMEDIATE

LIMITED OFFICIAL USE SECTION 1 OF 2 EC BRUSSELS 12029

E.O. 11652: N/A

TAGS: EEC, EFIS, ICNAF

SUBJECT: US/EC CONSULTATIONS ON A GOVERNING INTERNATIONAL
FISHERY AGREEMENT (GIFA)

REFS: (A) EC BRUSSELS 11952, (B) MADRID 9104

1. SUMMARY. DURING MEETING DEC 8 WITH MISSION OFFICERS, EC OFFICIALS CONVEYED CONSIDERED EC REACTON TO US PROPOSALS ON GIFA TEXT (REF B). IN SUM, EC IS PREPARED TO ACCEPT VIRTUALLY ALL US POSITIONS, BUT MUST BE ABLE TO SHOW THAT THEY WILL BE AT LEAST AS GOOD AS WE GAVE SOVIETS. PROGIVISON OF TEXT US-USSR GIFA IS THUS ESSENTIAL TO FURTHER PROGRESS. EC ASKS ALSO FOR SYMPATHETIC US CONSIDERATION OF CERTAIN DRAFTING CHANGES, MOST OF WHICH WE BELIEVE ARE REASONABLE AND OUGHT TO BE ACCOMMODATED. WE BELIEVE AGREEMENT ON TERMS SATISFACTORY TO US IS WITHIN READY GRASP. END SUMMARY

2. RAYMOND SIMMONET, COMMISSION OFFICIAL RESONSIBLE FOR FISHERIES NEGOTIATIONS, CONVEYED THE FORMAL COMMUNITY REACTIONS TO US COMMENTS ON THE US-EC DRAFT GIFA (REF B)
AFTER CONSULTATIONS WITHIN THE COMMISSION AND WITH MEMBER STATE REPRESENTATIVES. THE EC POSITION IS PRESENTED BELOW IN
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ACCORDANCE WITH THE NUMBERED PARAGRAPHS OF REF B:

PARA 3: THE EC WILL PROBABLY ACCEPT THE FIRST OPTION (I.E., SUGGESTIONS UP TO "HOWEVER, IF EC INSISTS, ETC.", BUT ONLY AFTER VERIFICATION THAT US PROPOSED LANGUAGE IS NO LESS FAVORABLE THAN THAT ACCEPTED BY USSR. IT WILL ALSO PROBABLY DROP ITS FOOTNOTE RE INTERPRETATION OF OPTIMUM UTILIZATION.

PARA 5: AFTER DISCUSSION OF VARIOUS ALTERNATIVES, SIMMONET AGREED TO RETENTION OF FIRST PARAGRAPH WITH "IS WILLING TO ALLOW."

PARA 6: EC IS WILLING TO DROP "AFTER CONSULTATION WITH THE COMMUNITY" BUT WOULD LIKE SPECIAL AGREED MINUTE TO INDICATE THAT CONSULTATION NOTED IN ARTICLE XII AND IN ANNEX I WILL ALSO COVER DISCUSSION OF FISHERY ALLOCATIONS. (THIS WOULD SIMPLY RECORD ASSURANCE GIVEN ON THE ISSUE IN REF B.)

PARA 7: EC AGREES TO DROP ITS PROPOSED TEXT BUT WOULD LIKE SOME TYPE OF SEPARATE ASSURANCE THAT US MEASURES ARE NOT INTENDED TO JEOPARDIZE FISHING, EITHER AS AGREED MINUTE, DECLARATION OR UNILATERAL US STATEMENT.

PARA 8: EC PREPARED TO DROP ITS RESERVATION ON PERMIT FEES WHEN IT HAS RECEIVED INDICATION OF LEVEL OF FEES. (COMMENT: IF TEAM COULD TELL COMMISSION WHAT IS IN FYI PORTION OF THAT PARA, WE THINK THAT WOULD DO THE JOB.)

PARA 9: EC HAS NO OBJECTIONS TO THE OBJECTIVE OF US-PROPOSED ARTICLE VII BIS BUT CANNOT AGREE TO THE PRESENT TEXT WHICH IMPOSES A PROHIBITION ON CERTAIN TYPES OF FISHING IN THE EC'S COMMON FISHERY POLICY. SIMMONET NOTED THAT THIS LANGUAGE IS INCONSISTENT WITH SEC. 102.2 OF THE US FISHERY MANAGEMENT ACT. AS AN ALTERNATIVE, SIMMONET SUGGESTED THAT THE EC COULD MAKE A UNILATERAL STATEMENT OR DECLARATION TO THE EFFECT THAT THE EC WILL REGULATE FISHING WITHIN THE FISHERIES ZONES OF THE MEMBER STATES AND, IN CONSULTATION WITH THE US, WILL CONTROL FISHING OF ANADROMOUS SPECIES OF US ORIGIN IN THESE ZONES IN ORDER TO ENSURE THE CONTINUED CONSERVATION OF THE STOCKS. SIMMONET HOPED THAT THE US SIDE WOULD AGREE TO THIS PROCEDURE AND SAID THE COMMISSION WOULD PROPOSE SUITABLE LANGUAGE AT THE TALKS BEGINNING DEC 13.

PARA 10: EC ACCEPTS US PROPOSED TEXT.
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PARA 11: EC AGREES TO DROP FOOTNOTE AND TO ACCEPT US TEXT.

PARA 12: SIMMONET STRESSED THAT ARTICLE X PRESENTS A PARTICULARLY THORNY PROBLEM FOR THE COMMUNITY. HE SUGGESTED STATING THAT THE US MAY IMPOSE PENALTIES "IN ACCORDANCE WITH THE LAWS OF THE US AND IN CONFORMITY WITH INTERNATIONAL LAW." HE APPEARED TO DROP THIS SUGGESTION WHEN DCM POINTED OUT OUR

VIEW THAT ONLY US LAW APPLICABLE AT PRESENT. SIMMONET ALSO SUGGESTED REINTRODUCTION OF PARA 3 ARTICLE X OF THE US STANDARD GIFA AS AMENDED FOR TAIWAN BUT INCLUDING IT AS AN AGREED MINUTE OR AS A UNILATERAL US STATEMENT. (THE REASON FOR THIS IS THAT THE EC PREFERS THAT THIS PARTICULAR PARAGRAPH NOT APPEAR IN THE AGREED TEXT SINCE IT MIGHT SET A PRECEDENT FOR EC AGREEMENTS WITH OTHER STATES.

PARA 14: EC AGREES WITH "REENFORCE EXISTING COOPERATION" AND WILL PROBABLY ALSO AGREE TO US TEXT IN BRACKET 3 AT THE END OF ARTICLE XI.

PARA 15: EC AGREES TO DROP REFERENCE TO ARBITRATION.

PARA 16: EC AGREES TO DELETE "TRANSFERRING CATCH."

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PARA 17: EC AGREES TO INSERTING US SUGGESTED PHRASE IN ITS TEXT OF PARA 1 ARTICLE XIV AND TO USE "IS WILLING TO ALLOW" IN PLACE OF "SHALL GRANT." SIMMONET POINTED OUT THAT SINCE EC IS PREPARED TO ASSURE SOME ACCESS TO US FISHERMEN EVEN WHEN THERE IS NO SURPLUS IN A COMMUNITY FISHING ZONE, IT WOULD LIKE SOME FAVORABLE CONSIDERATION IN FISHERY ALLOCATIONS (PARA 6B, REF A), BUT RECOGNIZES US DIFFICULTIES WITH LANGUAGE OF ITS PROPOSED PARA 2 ARTICLE SIV. IT THEREFORE PROPOSES FOLLOWING TEXT INSTEAD:

"IN THE CASE WHERE VESSELS OF MEMBER STATES OF THE COMMUNITY CAN HARVEST THE WHOLE OF THE TOTAL ALLOWABLE CATCH, THE COMMUNITY IS NEVERTHELESS WILLING, IN ACCORDANCE WITH THE PROVISIONS OF THE COMMON FISHERIES POLICY, TO ALLOW ACCESS TO UNITED STATES NATIONALS AND VESSELS PROVIDED THAT SUITABLE CONSIDERATION IS GRANTED BY THE UNITED STATES TO THE COMMUNITY IN DETERMINING THE LATTER'S FISHERY POSSIBILITIES IN THE UNITED STATES FISHERIES CONSERVATION ZONE."

PARA 18: EC AGREES.

PARA 19: MICHAEL HARDY, EC COMMISSION LEGAL ADVISER, HOPES VERY MUCH US SIDE COULD ACCEPT OPENING SENTENCE OF EC PROPOSED TEXT REGARDING ENTRY INTO FORCE OF GIFA AND TO AVOID EXCHANGE OF NOTES PROCEDURE. HARDY NOTES THAT US PROCEDURE POSES PROBLEMS FOR HIM LIMITED OFFICIAL USE

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FOR INTERNATL REASONS IN GETTING NECESSARY APPROVAL OF MEMBER STATES. REST OF US TEXT AGREEABLE TO EC.

PARA 20: SIMMONET SAID THAT, AS NOTED PARA 6C, REF A, PROVISIONS IN GIFA WHICH STIPULATE THAT ONLY CERTAIN EC MEMBER STATES HAVE ACCESS TO US WATERS IS ENCOUNTERING SERIOUS OBJECTIONS FROM MEMBERS STATES ON THE BASIS THAT THE EC IS BEING ASKED TO ACCEPT DISCRIMINATION AS BETWEEN EC MEMBERS. THIS WILL BE DIFFICULT TO SELL TO THE MEMBERS UNLESS HOPEFULLY SOME FORMULA CAN BE FOUND TO REDUCE ITS IMPACT. SIMMONET HAD NO SPECIFIC RECOMMENDATION AT THIS TIME BUT PLEADED FOR US UNDERSTADING OF DIFFICULTIES POSED BY THIS ISSUE. SIMMONET ASKED TEAM TO BRING WITH IT ANY INFORMATION IT MIGHT HAVE ON POSSIBLE FISH ALLOCATION FOR US AND THIRD COUNTRIES IN 1977. HE BELIEVES SUCH DATA MIGHT EASE HIS PROBLEM OF GAINING ACCEPTANCE BY EC MEMBERS OF THIS LIMITATION IF GIFA, AT LEAST FOR THE SHORT RUM. (COMMENT: HAVING EC ACCEPT IN A FORMAL AGREEMENT THAT ONLY CERTAIN MEMBER STATES CAN FISH IN US WATERS FOR AN INDEFINITE TIME PERIOD, IS CLEARLY DIFFICULT. SINCE THE US THROUGH ITS ALLOCATION OF FISHING PERMITS HAS ABSOLUTE CONTROL OVER WHICH STATES CAN FISH IN OUR NEW FISHING ZONES, PERHAPS IT WOULD BE ACCEPTABLE TO REPLACE THE AGREED MINUTE WITH A UNILATERAL US STATEMENT CONVEYING THE SUBSTANCE OF THE PRESENT TEXT. OTHER ALTERNATIVES CAN BE CONSIDERED WHEN TEAM ARRIVES.

3. SIMMONET ALSO INTRODUCED TWO NEW SUGGESTIONS:

(A) HE WOULD LIKE TO INTRODUCE THE POSSIBILITY OF TRANSFER OF FISHING LICENSES FROM ONE BOAT TO ANOTHER (OF PRESUMABLY THE SAME NATIONALITY) IN THE EVENT FORCE MAJEURE PREVENTS THE LICENSE HOLDER FROM CARRYING OUT ITS PERMISSIBLE FISHERY. IN ADDITION TO THE EXTREME CASE OF A BOAT SINKING, A BOAT CAN ALSO BE DISABLED FOR A VARIETY OF CAUSES. HE SUGGESTS A POSSIBLE AGREED MINUTE.

(B) IN PARA 1, ARTICLE XII, SIMMONET SUGGESTED DELETION OF
"PERIODIC" IN THE FIRST LINE AS NOT BEING NECESSARY.

4. SIMMONET NOTED THAT THE MEETING ON MONDAY, DEC 13 WILL
CONSIST OF STAFF TALKS BETWEEN THE COMMISSION AND US TEAMS. HE
LEFT OPEN THE POSSIBILITY OF A MORE FORMAL MEETING IN THE
PRESENCE OF EC OBSERVERS THE FOLLOWING DAY. IF SUFFICIENT
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PROGRESS CAN BE MADE ON MONDAY, AN OPEN MEETING ON TUESDAY
(IF THE US SIDE IS AGREEABLE) COULD EXPEDITE THE EC APPROVAL
PROCESS AND AN EARLY CONCLUSION OF THE GIFA. DCM POINTED OUT
THAT THIS WOULD HAVE TO BE WITH THE TEAM AFTER ITS ARRIVAL. HE
STRESSED, HOWEVER, THAT THE US TEAM IS NOT AUTHORIZED TO INITIAL
AN AGREEMENT DURING PRESENT VISIT. IF, HOWEVER, IT IS CLEAR FROM
TWO DAYS' DISCUSSION THAT WE HAVE COMPLETE MEETING OF THE MINDS
ON THE TEXT, IT SHOULD NOT BE TOO DIFFICULT TO FINISH THE
PROCEDURES FOR SIGNATURE WITH THE IMPORTANT PROVISIO
THAT THE COMMISSION STILL HAS TO DEMONSTRATE TO OUR SATISFACTION
THAT IT HAS THE REQUIRED COMPETENCE TO ENTER INTO FISHERY
AGREEMENT AND TO ASSURE ITS ENFORCEMENT ON BEHALF OF THE MEMBER
STATES.

5. DCM ALSO SUGGESTED THAT, IN RESPONSE TO HIS QUERY AT THE LAST
MEETING ON DEC 6, THE EC TAKE THE INITIATIVE TO SUGGEST A DATE
TO BEGIN NEGOTIATIONS FOR A SECOND BILATERAL FISHERY AGREEMENT
PROVIDING US ACCESS TO CERTAIN EC FISHING ZONES (PARA 21 REF
B). HINTON

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